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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/138,926	08/24/1998	FRANK C. CESARE	D-6362	4707
6449	7590	03/24/2004	EXAMINER	
ROTHWELL, FIGG, ERNST & MANBECK, P.C.			NOLAN, SANDRA M	
1425 K STREET, N.W.			ART UNIT	
SUITE 800			PAPER NUMBER	
WASHINGTON, DC 20005			1772	

DATE MAILED: 03/24/2004

Please find below and/or attached an Office communication concerning this application or proceeding.

<b>Office Action Summary</b>	<b>Application No.</b> 09/138,926	<b>Applicant(s)</b> CESARE	
	<b>Examiner</b> Sandra M. Nolan	<b>Art Unit</b> 1772	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

#### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
  - If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
  - If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
  - Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

#### Status

- 1) ☒ Responsive to communication(s) filed on 29 December 2003.
- 2a) ☐ This action is **FINAL**.                      2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

#### Disposition of Claims

- 4) ☒ Claim(s) 1-28 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☒ Claim(s) 14-28 is/are allowed.
- 6) ☒ Claim(s) 1-13 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

#### Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
 Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
 Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

#### Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All    b) ☐ Some \* c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

#### Attachment(s)

- |  |   |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892)  | 4) <input type="checkbox"/> Interview Summary (PTO-413)<br>Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)                                   | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152)             |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)<br>Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____  |

## **DETAILED ACTION**

### ***Claims***

1. Claims 1-28 are pending. The examiner is unable to locate a copy of claims 29-30 in the eDAN file.

### ***Request for Clean Copy of Pending Claims***

2. It is asked that applicants send in, with the next response, a clean copy of all pending claims. That copy will facilitate further processing of the application.

### ***Withdrawal of Rejections***

3. The 35 USC 102 rejection of claims 1-10, 13-22 and 27-30 as anticipated by Meynard (US 3,890,263), as set out in section 5 of the 25 September 2003 office action, is withdrawn in view of applicants' persuasive arguments in the last two paragraphs on page 3 and the first full paragraph on page 4 of the 29 December 2003 response.
4. The 35 USC 103 rejection of claims 11-12 and 23-24 as unpatentable over Meynard in view of Frances (US 4,514,541), as recited in section 8 of the 25 September 2003 office action, is withdrawn in view of applicants' persuasive arguments on page 5 of the 29 December 2003 response.

### ***Allowable Subject Matter***

5. Claims 14-28 are allowed.
6. The prior art of record fails to teach or suggest compositions or articles having all of the features recited in claim 14.
7. While Toyosawa teaches the terpolymers of claims 14-28, it fails to teach the blending of solid terpolymers of this type with high molecular weight polymers.

***New Rejections***

***Claim Rejections - 35 USC § 102***

8. The text of those sections of Title 35, U.S. Code not included in this action can be found in a prior Office action.

9. Claims 1-11 are rejected under 35 U.S.C. 102(b) as being anticipated by Toyosawa et al (EP 0 699 710 A2).

Toyosawa teaches polymeric compositions containing copolymers containing 1-60% ethylene with propylene and either 1,4-hexadiene or dicyclopentadiene (page 4, lines 16-30). The 1,4-hexadiene and cyclopentadiene are used at 1-15% levels (lines 26-30). The compositions contain glass fibers (page 5, line 16).

The *number* average molecular weight of 20,000 recited at page 4, line 24 of Toyosawa is deemed to render the *viscosity* average molecular weight of applicants' claims inherent, since both measure the same property.

***Claim Rejections - 35 USC § 103***

10. Claims 12 and 13 are rejected under 35 U.S.C. 103(a) as being unpatentable over Toyosawa.

Toyosawa is discussed above. It fails to teach aramid fibers or the amount of reinforcing agent claimed.

In the absence of convincing objective evidence to the contrary, the selection of high strength aramid fibers and the use of these or other reinforcers in amounts that optimize the properties of articles made from Toyosawa's compositions are deemed matters of routine experimentation. In re Peterson, 65 USPQ2d 1379 (Fed.Cir 2003).

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**Conclusion**

Any inquiry concerning this communication should be directed to Sandra M. Nolan, whose telephone number is 571/272-1495. She can normally be reached on Monday through Thursday, from 6:30 am to 4:00 pm, Eastern Time. If attempts to reach the examiner are unsuccessful, her supervisor, Harold Pyon, can be reached at 571/272-1498.

The fax number for patent application documents is 703/872-9306.



S. M. Nolan  
Primary Examiner  
Technology Center 1700

SMN/smn  
09138926(20040310)